A.F.R.

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HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
MISCELLANEOUS APPEAL NO. 896 of 2005

Appellant :
Plaintiff

Siyaram Agrawal,
s/o Late Shri Hanuman Prasad
Agrawal, aged about 69 years,
r/o Ramsagar Para, Raipur,
Teh & Dist. Raipur (C.G).

Vs.

Respondent:
Defendant

Pooran Singh,
s/o Late Shri Parakh Singh,
aged about 84 years,
r/o Purani Basti, Raipur,
Teh & Dist Raipur (C.G)

Presently residing at
House No.31/228,
Civil Line, Raipur (CG).

PRESENT:

Shri HS Patel, counsel for the appellant.

Shri BP Sharma, counsel for the respondent.

O R D E R

(Passed on 28th September 2005)

This appeal is directed against the Order dated 27.06.2005 passed by the District Judge, Raipur in Civil Suit No.7-A/2005 vide which the application filed by the appellant under Order 39 Rules 1 & 2 of the CPC for grant of temporary injunction has been rejected.

2) Plaintiff filed a suit for specific performance of the contract and delivery of possession of the suit land averring that, on

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04.01.2004, a written agreement was executed by the defendant in his favour whereby defendant agreed to sell the suit land and towards consideration obtained an advance amount of Rs.10,00,000/- (Rupees ten lakhs). According to the plaintiff, subsequently on 26.03.2004defendant also received Rs.50,000/- (Rupees fifty thousand). Registered sale deed was to be executed after demarcation of the land. The appellant was always ready and willing to perform his part of the contract, but the respondent, on one pretext or the other, avoided, and on being served with a legal notice on 07.03.2005, filed a reply informing that the contract has been rescinded. Although the respondent admits that, an agreement to sell has been executed by him and also admits receipt of Rs.10 lakhs in advance, denies the claim of the appellant.

3) The appellant filed an application under Order 39 Rules 1 & 2 of the CPC for grant of temporary injunction against the defendant by issuance of an order prohibiting him to alienate the property during the pendency of the suit. The respondent opposed the same.

4) Learned trial Court, after hearing both the parties and taking into consideration all the material produced before it for consideration of the application, held that balance of

convenience and principle of irreparable loss do not lie in favour of the appellant, therefore, by impugned order, rejected his application.

5) The appellant, relying on the judgment rendered by Hon'ble the Apex Court in ***Hindustan Petroleum Corporation Limited Vs Sriman Narayan and another*** reported in 2002 Vol. 5 SCC 760 and the judgment rendered by Hon'ble the High Court of MP in ***Khubi Vs Gulab*** reported in Weekly Note 1993 short note 331, contended that, learned Court below, holding the case prima facie in favour of the appellant, has no right to deny the temporary injunction in his favour.

6) On the other hand, the respondent, relying on the judgment rendered by Hon'ble the Apex Court in ***MP Housing Board Vs Anil Kumar Khiwani,*** reported in AIR 2005 SC 1863 in (para 22), contended that, for temporary injunction being equitable relief, it is necessary that the appellant must establish not only prima facie case but also balance of convenience and irreparable loss in his favour.

7) The agreement to sell was executed on 04.01.2004 by the respondent in favour of the appellant and admittedly, a sum of Rs.10 lakhs as an advance was received by the respondent. The appellant himself has filed the suit for possession, therefore, it is

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established that, by the agreement to sell, the respondent did not deliver possession of the suit land to the appellant. As per the agreement, the sale deed was required to be executed within five months from the date of demarcation. Appellant's contention is that demarcation has not yet been completed, whereas respondent's contention is that, long back, in the knowledge of appellant, demarcation has been done, but, the appellant was not ready and willing to perform his part of the contract. Learned Court below virtually, taking into account the time factor mentioned in the agreement to sell, held the suit prima facie in favour of the appellant. Learned Court below found that the appellant has already entered into a contract to sell the suit land to another person though title has not been transferred in his favour so far. Therefore, in its view, balance of convenience does not lie in favour of the appellant. Learned Court below also held that in case of refusal of a decree for specific performance, the appellant can claim compensation, therefore, no irreparable loss could be caused to him.

8) In para 6D of the memo of appeal, a reference has been made regarding agreement to sell the land by the appellant to another person, although it has been mentioned that the agreement relates to other subject matters, but it is not contended that the said agreement does not relate to the suit land, nor the finding of the trial Court regarding agreement to sell entered by the appellant for the

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suit land with another person has been challenged. Therefore, when the appellant is not in possession of the suit land and title has not yet been transferred in his favour, making an agreement with another person for sale of the suit land for consideration itself is sufficient to show that balance of convenience does not lie in his favour. So far as irreparable loss is concerned, the suit is for specific performance of the contract, but the appellant/plaintiff is not in possession of the suit land, therefore, in absence of injunction, restraining the respondent/defendant from alienating the property, no irreparable loss could be caused to the appellant/plaintiff.

9) The judgment rendered in ***Khubi Vs Gulab*** (supra) is distinguishable on facts and from the judgment rendered in ***MP Housing Board Vs Anil Kumar Khiwani*** (supra) and ***Hindustan Petroleum Corporation Limited Vs Sriman Narayan and another*** (supra), it is clear that granting interim injunction is to lessen the risk of irreparable injury and injustice which can not be compensated for in money. Here in the instant case, neither balance of convenience lies in favour of the appellant , nor in the facts and circumstances he has to suffer irreparable loss.

10) In the result, the appeal is devoid of substance, therefore, liable to be dismissed and is accordingly dismissed.

11) Parties to bear their own costs.

Sd/-
V.K. Shrivastava
Judge
28.09.2005

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